

Senate File 178 - Introduced

SENATE FILE 178

BY ZAUN

A BILL FOR

1 An Act relating to the operations and governance of certain
2 common interest communities.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

DIVISION I

IOWA COMMON INTEREST OWNERSHIP ACT

Section 1. NEW SECTION. 499C.101 Title.

This chapter shall be known and cited as the "*Iowa Common Interest Ownership Act*".

Sec. 2. NEW SECTION. 499C.102 Public policy.

The general assembly declares that it is the public policy of the state that the management and affairs of common interest communities be conducted openly, and this chapter shall be construed to provide open access to the management of the common interest community for the unit owners.

Sec. 3. NEW SECTION. 499C.103 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Assessment*" means a sum attributable to each unit and due to the unit owners association as may be provided in a declaration or in the bylaws.

2. "*Bylaws*" means the instruments, however denominated, that contain the procedures for conducting the affairs of the unit owners association or the executive board regardless of the form in which the association is organized, including any amendments to such instruments.

3. "*Common element*" means:

a. For a cooperative under chapter 499A or a horizontal property regime under chapter 499B, all portions of the common interest community other than the units.

b. For a planned community, any real estate within the planned community which is owned or leased by the unit owners association, other than a unit.

c. For all common interest communities, any other interests in real estate identified in the declaration for the benefit of unit owners.

4. "*Common expenses*" means expenditures made by, or financial liabilities of, the unit owners association or the executive board, together with any allocations to reserves.

1 5. *a. "Common interest community"* means real estate
2 described in a declaration with respect to which a person,
3 by virtue of the person's ownership of a unit, is obligated
4 to pay for a share of real estate taxes, insurance premiums,
5 maintenance, or improvement of, or services or other expenses
6 related to, common elements, other units, or other real estate
7 described in the declaration. *"Common interest community"*
8 includes a cooperative under chapter 499A and a horizontal
9 property regime under chapter 499B.

10 *b. "Common interest community"* does not include:

11 (1) A covenant that requires the owners of separate parcels
12 of real estate to share costs or other obligations related to a
13 wall, driveway, well, or other similar structure, unless all
14 such owners consent in writing to the creation of a common
15 interest community.

16 (2) Real estate described in paragraph *"a"* if all units are
17 owned by a single owner.

18 6. *"Declarant"* means a person or group of persons who,
19 as the record title owner of real estate, by a declaration,
20 creates a common interest community.

21 7. *"Declaration"* means the instrument, however denominated,
22 that creates a common interest community, including any
23 amendments to the instrument.

24 8. *"Executive board"* means the body, regardless of name,
25 designated in the declaration or bylaws to act on behalf of the
26 unit owners association.

27 9. *"Planned community"* means a common interest community
28 that is not solely a cooperative under chapter 499A or
29 solely a horizontal property regime under chapter 499B, and
30 includes property owner or homeowner associations. However, a
31 cooperative under chapter 499A or a horizontal property regime
32 under chapter 499B may be part of a planned community.

33 10. *"Rule"* means a policy, guideline, restriction,
34 procedure, or regulation, however denominated, which is not set
35 forth in the declaration or bylaws.

1 11. "*Unit*" means a physical portion of the common interest
2 community designated for separate ownership or occupancy or
3 as otherwise defined in the statute under which the common
4 interest community is organized.

5 12. "*Unit owner*" means a declarant or other person that owns
6 a unit, but does not include a person having an interest in a
7 unit solely as security for an obligation. In a horizontal
8 property regime under chapter 499B or a planned community,
9 the declarant is the owner of a unit. In a cooperative under
10 chapter 499A, the declarant is the owner of any unit to
11 which an interest has been allocated until that unit has been
12 conveyed to another person.

13 13. "*Unit owners association*" means an association,
14 regardless of name, organized as a for-profit or nonprofit
15 corporation, trust, limited liability company, partnership,
16 unincorporated association, or any other form of organization
17 authorized by the laws of this state, the membership of
18 which consists solely of unit owners except following
19 termination of the common interest community, at which time the
20 association shall consist of all former unit owners entitled
21 to distributions of proceeds or their heirs, successors, or
22 assigns.

23 Sec. 4. NEW SECTION. **499C.104 Variation by agreement.**

24 Except as expressly provided in this chapter, the provisions
25 of this chapter may not be varied by agreement, and rights
26 conferred by it may not be waived.

27 Sec. 5. NEW SECTION. **499C.105 Applicability.**

28 Unless otherwise provided by law:

29 1. This chapter applies to common interest communities
30 within this state having eight or more units.

31 2. Any portion of a declaration, bylaws, covenant, or
32 other contractual provision existing prior to July 1, 2017,
33 that violates or is inconsistent with this chapter is not
34 enforceable. However, nothing in this chapter shall be
35 construed to invalidate other provisions of the declaration,

1 bylaws, covenant, or contractual provision of those common
2 interest communities established before July 1, 2017.

3 3. The provisions of this chapter shall prevail over any
4 conflicting provision of law under which a common interest
5 community or unit owners association is organized.

6 Sec. 6. NEW SECTION. 499C.201 Unit owners association —
7 powers and duties.

8 1. Except as otherwise provided in this chapter, a unit
9 owners association shall do all of the following:

10 a. Adopt bylaws and amend such bylaws.

11 b. Adopt budgets, collect assessments for common expenses
12 from unit owners, and invest funds of the association, if
13 applicable.

14 2. Unless otherwise limited by a declaration or bylaws, a
15 unit owners association shall have authority to do any of the
16 following:

17 a. Adopt and amend rules for operation of the unit owners
18 association.

19 b. Hire, employ, and discharge employees, agents, and
20 independent contractors.

21 c. Institute, defend, or intervene in litigation,
22 arbitration, mediation, or governmental administrative
23 proceedings on behalf of the unit owners association or for two
24 or more unit owners on matters affecting the common interest
25 community.

26 d. Make contracts and incur liabilities.

27 e. Regulate the use, maintenance, repair, replacement, and
28 modification of common elements.

29 f. Cause additional improvements to be made to the common
30 elements of the common interest community.

31 g. Acquire, hold, encumber, and convey any right, title, or
32 interest to real estate or personal property.

33 h. Grant easements, leases, licenses, and concessions
34 through or over the common elements of the common interest
35 community.

1 *i.* Impose and receive any payments, fees, or charges for the
2 use, rental, or operation of the common elements, other than
3 limited common elements as defined in section 499B.2, and for
4 services provided to unit owners.

5 *j.* Impose charges for late payment of assessments and,
6 after notice and an opportunity to be heard, impose reasonable
7 monetary penalties for violations of the declaration, bylaws,
8 and rules of the association.

9 *k.* Impose reasonable charges for the preparation and
10 recording of statements of unpaid assessments.

11 *l.* Provide for the indemnification of its officers and
12 executive board, including maintenance of liability insurance
13 for directors and officers of the unit owners association.

14 *m.* Assign its right to future income, including the right
15 to receive assessments.

16 *n.* Exercise powers conferred by the declaration or bylaws.

17 *o.* Exercise all other powers that may be exercised in this
18 state by organizations of the same type as the unit owners
19 association.

20 *p.* Suspend any right or privilege of a unit owner who fails
21 to pay an assessment. The unit owners association shall not,
22 however, deny a unit owner or other occupant access to the
23 owner's unit, suspend a unit owner's right to vote, prevent a
24 unit owner from seeking election as a director or officer of
25 the association, or withhold services provided to a unit or a
26 unit owner by the association if the effect of withholding the
27 service would be to endanger the health, safety, or property
28 of any person.

29 *q.* Exercise any other powers necessary and proper for the
30 governance and operation of the association.

31 3. If a tenant of a unit owner violates the declaration,
32 bylaws, or rules of the association, in addition to exercising
33 any of its powers against the unit owner, the association may
34 do any of the following:

35 *a.* After giving notice to the tenant and the unit owner and

1 providing each an opportunity to be heard, exercise the powers
2 described in subsection 2, paragraph "j", against the offending
3 tenant.

4 *b.* Take other action against the tenant for the violation in
5 the same manner as the unit owner, acting as landlord, could
6 have exercised under the lease or in the manner that the unit
7 owners association could lawfully have taken action directly
8 against the unit owner, or both. Action under this paragraph
9 may only be taken if the tenant or unit owner fails to remedy
10 the violation within ten days after notification by the unit
11 owners association of the violation.

12 4. Unless a lease of a unit otherwise provides, this section
13 does not do any of the following:

14 *a.* Affect rights that the unit owner possesses to enforce
15 the lease or that the unit owners association has under other
16 provisions of law.

17 *b.* In the absence of a violation of the declaration, bylaws,
18 or rules, authorize the unit owners association to enforce a
19 lease to which the unit owners association is not a party.

20 5. An executive board may determine whether to exercise
21 the association's power to impose sanctions or commence an
22 action for a violation of the declaration, bylaws, or rules,
23 including whether to settle any claim for unpaid assessments or
24 other claim made by or against the unit owners association. An
25 executive board does not have a duty to take enforcement action
26 if the executive board determines, following consideration of
27 the facts and circumstances presented, any of the following:

28 *a.* The association's legal position does not justify taking
29 any or further enforcement action.

30 *b.* The covenant, restriction, or rule being enforced is, or
31 is likely to be construed as, inconsistent with law.

32 *c.* Despite the existence of a violation, the violation is
33 nonmaterial and does not justify expenditure of the unit owners
34 association's resources.

35 *d.* It is not in the unit owners association's best interests

1 to pursue an enforcement action.

2 6. The failure of an executive board to take action pursuant
3 to subsection 5 shall not prevent the executive board from
4 taking enforcement action under a similar set of circumstances
5 or facts. The authority of an executive board to take action
6 under this chapter shall not, however, be exercised in an
7 arbitrary or capricious manner.

8 Sec. 7. NEW SECTION. **499C.202 Executive board.**

9 1. A unit owners association shall have an executive
10 board and, except as otherwise provided in the declaration,
11 the bylaws, subsection 2, or provisions of the statute under
12 which the common interest community is organized, an executive
13 board acts on behalf of the unit owners association. In
14 the performance of their duties, officers and members of the
15 executive board appointed by the declarant shall exercise the
16 degree of care and loyalty to the unit owners association
17 required of a trustee. Officers and members of an executive
18 board not appointed by the declarant shall exercise the degree
19 of care and loyalty to the unit owners association required
20 of an officer or director of a corporation organized under
21 chapter 504, and such officers and members are subject to the
22 conflict of interest rules governing directors and officers
23 under chapter 504.

24 2. An executive board shall not act on behalf of the unit
25 owners association to amend the declaration, to terminate the
26 common interest community, to elect members of the executive
27 board, or to determine the qualifications, powers and duties,
28 or terms of office of executive board members. An executive
29 board may fill vacancies in its membership for the unexpired
30 portion of any term.

31 3. a. Subject to subsection 4, the declaration may
32 provide for a period of declarant control of the unit owners
33 association during which a declarant, or persons designated by
34 the declarant, may appoint and remove the officers and members
35 of the executive board. In no case, however, shall a period of

1 declarant control continue upon the occurrence of any of the
2 following:

3 (1) Sixty days after the conveyance of seventy-five percent
4 of all units in the common interest community to unit owners
5 other than a declarant.

6 (2) Two years after all declarants have ceased to offer
7 units for sale in the ordinary course of business.

8 (3) Two years after the addition of any number of new units
9 to the common interest community.

10 (4) The date the declarant, after giving written notice
11 to all unit owners, records an instrument voluntarily
12 surrendering all rights to control activities of the unit
13 owners association.

14 b. A declarant may voluntarily surrender the right to
15 appoint and remove officers and members of the executive board
16 before termination of the period under paragraph "a". However,
17 the declarant may retain, for the duration of the period of
18 declarant control, approval authority for specified actions of
19 the unit owners association or executive board, as described in
20 a recorded instrument executed by the declarant.

21 4. a. Not later than sixty days after conveyance of
22 twenty-five percent of the units to unit owners other than a
23 declarant, at least one member, and not less than twenty-five
24 percent of the members of the executive board, must be elected
25 by unit owners other than the declarant.

26 b. Not later than sixty days after conveyance of fifty
27 percent of the units to unit owners other than a declarant, not
28 less than one-third of the members of the executive board must
29 be elected by unit owners other than the declarant.

30 5. Following the termination of any period of declarant
31 control under this section, the unit owners shall elect an
32 executive board of at least three members, at least a majority
33 of whom must be unit owners. The executive board members shall
34 elect officers of the executive board. The executive board
35 members and officers shall take office upon election. This

1 subsection shall not apply to a common interest community if
2 all the units of the community are owned by one owner.

3 6. Notwithstanding any provision of the declaration or
4 bylaws to the contrary, the unit owners, by a two-thirds vote
5 of all persons present and entitled to vote at any meeting of
6 the unit owners at which a quorum is present, may remove any
7 member of the executive board with or without cause, other than
8 a member appointed by the declarant.

9 Sec. 8. NEW SECTION. 499C.401 Meetings.

10 1. Meetings of a unit owners association shall comply with
11 all of the following:

12 a. A unit owners association shall hold a meeting of
13 unit owners annually at a time, date, and place stated in or
14 determined in accordance with the declaration or bylaws.

15 b. A unit owners association shall hold a special meeting
16 of unit owners to address any matter affecting the unit owners
17 association if the association's president, a majority of the
18 executive board, or a number of unit owners comprising at
19 least forty percent of all votes in the association, unless a
20 different percentage is specified in the bylaws, requests that
21 the secretary call the meeting. If the unit owners association
22 does not notify unit owners of a special meeting within thirty
23 days after the required number of unit owners has requested the
24 secretary to call a special meeting, the requesting members may
25 directly notify all unit owners of the meeting. Only matters
26 described in the meeting notice may be considered at a special
27 meeting.

28 c. A unit owners association shall notify each unit owner
29 of the time, date, and place of each annual and special unit
30 owners meeting not less than ten days and not more than sixty
31 days before the meeting date. Each meeting notice shall state
32 the time, date, and place of the meeting and the items on the
33 agenda in a manner reasonably calculated to apprise the unit
34 owners of that information, including but not limited to:

35 (1) A statement of the general nature of any proposed

1 amendment to the declaration or bylaws.

2 (2) A statement describing any budget changes.

3 (3) Any proposal to remove an officer or member of the
4 executive board.

5 d. The requirements relating to the timing of meeting
6 notices under paragraph "c" may be reduced or waived for a
7 meeting called to address an emergency. A meeting called to
8 address an emergency shall be limited to matters arising out
9 of the emergency.

10 e. Each unit owner shall be given a reasonable opportunity
11 at any meeting to comment on any matter affecting the common
12 interest community or the unit owners association or only on
13 the emergency being addressed, if applicable.

14 f. The declaration or bylaws may allow for meetings of
15 unit owners to be conducted by telephonic, video, or other
16 conferencing methods, if such methods are consistent with
17 subsection 2, paragraph "g".

18 2. Meetings of the executive board and meetings of
19 committees of the unit owners association, authorized to act
20 for the unit owners association, shall comply with all of the
21 following:

22 a. Meetings shall be open to the unit owners except during
23 executive sessions. The executive board and committees of the
24 unit owners association authorized to act for the association
25 may hold an executive session only during a regular or special
26 meeting of the board or the committee. No final vote or final
27 action may be taken during an executive session. An executive
28 session may only be held for the following reasons:

29 (1) To consult with the unit owners association's attorney
30 concerning legal matters governed by attorney-client privilege.

31 (2) To discuss existing or potential litigation or
32 mediation, arbitration, or governmental administrative
33 proceedings.

34 (3) To discuss matters relating to the job performance,
35 compensation, or health records of an individual employee or

1 specific complaints against an individual employee of the
2 unit owners association or against an independent contractor
3 retained by the unit owners association.

4 (4) To discuss contracts, leases, and other commercial
5 transactions for goods or services that are under negotiation,
6 including the review of bids or proposals, if public disclosure
7 of such matters would place the unit owners association at a
8 disadvantage.

9 (5) To discuss personal, health, or financial information
10 relating to a unit owner, a specific employee of the unit
11 owners association, or a specific employee of an independent
12 contractor retained by the unit owners association, including
13 any records of the unit owners association relating to such
14 information.

15 b. Executive board members shall not use incidental or
16 social gatherings of board members or any other method to
17 evade the meeting and notice requirements of this section.
18 For purposes of this section, a gathering of board members at
19 which the board members do not conduct unit owners association
20 business is not a meeting of the executive board.

21 c. During a period of declarant control, the executive board
22 shall meet at least one time each year. At least one of the
23 meetings shall be held at the common interest community or at
24 a place convenient to the unit owners of the common interest
25 community. After termination of the period of declarant
26 control, all executive board meetings shall be held at the
27 common interest community or at a place convenient to the unit
28 owners of the common interest community unless the unit owners
29 amend the bylaws to vary the location of such meetings.

30 d. Unless the meeting is called to address an emergency,
31 at each executive board meeting, the executive board shall
32 provide a reasonable opportunity for unit owners to comment on
33 any matter affecting the common interest community and the unit
34 owners association.

35 e. Unless the meeting is included in a schedule given to the

1 unit owners or the meeting is called to address an emergency,
2 the secretary or other officer specified in the bylaws shall
3 give notice of each executive board meeting to each executive
4 board member and to each unit owner. Such notice shall be
5 given at least ten days before the meeting and shall state the
6 time, date, place, and agenda of the meeting.

7 *f.* If any materials are distributed to the executive board
8 before a meeting, the executive board, upon receipt of the
9 materials, shall make copies reasonably available to unit
10 owners, except that the executive board is not required to make
11 available copies of unapproved minutes or materials that are to
12 be considered during an executive session.

13 *g.* Unless otherwise provided in the declaration or bylaws,
14 the executive board may conduct a meeting by telephonic,
15 video, or other conferencing methods if all of the following
16 conditions are met:

17 (1) The meeting notice states the conferencing method to
18 be used and provides information explaining how unit owners
19 may participate in the conference directly or by meeting at a
20 central location or conference connection.

21 (2) The process provides all unit owners the opportunity
22 to hear or perceive the discussion and to comment on matters
23 before the executive board.

24 *h.* Following termination of the period of declarant control,
25 unit owners may amend the bylaws to vary the procedures for
26 meetings described in paragraph "*g*".

27 *i.* In lieu of a meeting, the executive board may act by
28 unanimous consent if such action is documented in a record
29 authenticated by all executive board members. The secretary
30 shall give prompt notice to all unit owners of any action
31 taken by unanimous consent. After termination of the period
32 of declarant control, an executive board may act by unanimous
33 consent only to undertake ministerial actions or to implement
34 actions previously taken at a meeting of the executive board.

35 *j.* Unless otherwise restricted by this chapter or the common

1 interest community's bylaws, an executive board may determine
2 rules of procedure for the executive board.

3 *k.* An executive board may remove any person from a meeting
4 of the executive board upon a finding by a majority of the
5 board members that the person is being disruptive to the
6 meeting. An executive board may bar any person from meetings
7 of the executive board or other meetings of the common interest
8 community for a period of up to one year if the person has
9 been twice removed from a meeting within the preceding twelve
10 months.

11 *l.* An action by an executive board that is not in compliance
12 with this section is valid unless invalidated by a court. A
13 challenge to the validity of an action of the executive board
14 for failure to comply with this section shall not be brought
15 more than sixty days after the minutes of the executive board
16 meeting at which the action was taken are approved or the
17 record of that action is distributed to unit owners, whichever
18 is later.

19 Sec. 9. NEW SECTION. **499C.402 Association records.**

20 1. A unit owners association shall retain all of the
21 following:

22 *a.* Detailed records of receipts and expenditures relating to
23 the operation and administration of the unit owners association
24 and other appropriate accounting records.

25 *b.* Minutes of all unit owners meetings and executive board
26 meetings, a record of all actions taken by the unit owners or
27 the executive board without a meeting, and a record of all
28 actions taken by a committee in place of the executive board on
29 behalf of the unit owners association. The minutes retained
30 by the unit owners association shall indicate the date, time,
31 and place of the meeting, the names of all persons present
32 at the meeting, and each action taken at the meeting. The
33 minutes shall also include the results of each vote taken at
34 the meeting, including information indicating the vote of each
35 executive board member present at the meeting. The vote of

1 each executive board member present shall be made public at the
2 open session.

3 *c.* The names of all unit owners in a form that permits
4 preparation of a list of the names of all owners and the
5 regular mail and electronic mail addresses at which the unit
6 owners association communicates with them, and the number of
7 votes each unit owner is entitled to cast.

8 *d.* The unit owners association's original and amended
9 organizational documents, bylaws including all amendments to
10 the bylaws, and all rules of the common interest community
11 currently in effect.

12 *e.* All financial statements and tax returns of the unit
13 owners association for the past three years.

14 *f.* A list of the names and addresses of the current
15 executive board members and officers.

16 *g.* The unit owners association's most recent annual report
17 delivered to the secretary of state, if applicable.

18 *h.* Copies of each contract to which the unit owners
19 association is currently a party.

20 *i.* Records of executive board or committee actions relating
21 to requests for design or architectural approval from unit
22 owners.

23 *j.* Ballots, proxies, and other records related to voting by
24 unit owners for one year after the election, action, or vote.

25 2. Except as provided under subsections 3 and 4, all records
26 retained by a unit owners association must be available for
27 examination and copying by a unit owner or the unit owner's
28 authorized agent during reasonable business hours or at a
29 mutually convenient time and location upon providing a five
30 days' notice that reasonably identifies the specific records
31 that are being requested.

32 3. Records retained by a unit owners association may be
33 withheld from inspection and copying to the extent that they
34 concern:

35 *a.* Personally identifiable information, salary, and medical

1 records relating to specific individuals.

2 *b.* Information relating to contracts, leases, and other
3 commercial transactions that are currently under negotiation to
4 purchase or provide goods or services.

5 *c.* Information relating to existing or potential litigation,
6 mediation, arbitration, or governmental administrative
7 proceedings.

8 *d.* Information relating to existing or potential matters
9 involving governmental administrative proceedings or other
10 proceedings before a government tribunal for enforcement of the
11 declaration, bylaws, or rules.

12 *e.* Communications with the unit owners association attorney
13 which are otherwise protected by the attorney-client privilege
14 or the attorney work-product doctrine.

15 *f.* Information that if disclosed would violate another
16 provision of law.

17 *g.* Records of an executive session of the executive board.
18 However, upon the completion of a matter that is the subject of
19 an executive session held under section 499C.401, subsection
20 2, paragraph "a", subparagraphs (1) through (4), such records
21 of the executive session shall be available for inspection as
22 provided in this section.

23 *h.* Records directly related to the personal, health, or
24 financial information of a unit owner if the person requesting
25 the records is not the unit owner that is the subject of the
26 records.

27 4. A unit owners association may charge a reasonable fee
28 for providing copies of any records under this section and for
29 supervising the inspection of such records.

30 5. The right to inspect records under this section includes
31 the right to copy records by photocopying or other means and
32 includes the right to receive copies through an electronic
33 transmission, if available, upon request of the requester.

34 6. A unit owners association is not obligated to compile or
35 synthesize information or records under this section.

1 7. Information or records obtained under this section shall
2 not be used for commercial purposes.

3 Sec. 10. NEW SECTION. **499C.403 Notice to unit owners.**

4 1. A unit owners association or an executive board, as
5 applicable, shall deliver each notice required to be given by
6 the association or board under this chapter to the regular mail
7 address or electronic mail address provided by each unit owner.
8 If a regular mail address or electronic mail address is not
9 provided by the unit owner, the notice may be delivered using
10 any of the following methods:

11 a. Hand delivery to the unit owner.

12 b. Mailing by certified mail, as defined in section 618.15,
13 or by regular mail to the address of the unit.

14 c. Any other method reasonably calculated to provide notice
15 to the unit owner.

16 2. The ineffectiveness of a good-faith effort to deliver
17 notice under subsection 1 does not invalidate an action taken
18 at a meeting or an action taken by other means.

19 Sec. 11. NEW SECTION. **499C.501 Cause of action — attorney**
20 **fees.**

21 A declarant, unit owners association, unit owner, or any
22 other person subject to this chapter may bring an action to
23 enforce a right granted or obligation imposed by this chapter,
24 the declaration, or the bylaws. In any action under this
25 chapter, the court may award reasonable attorney fees to the
26 prevailing party.

27 DIVISION II

28 CORRESPONDING CHANGES

29 Sec. 12. NEW SECTION. **499A.201 Applicability.**

30 This chapter shall apply to cooperatives established under
31 this chapter unless otherwise provided in chapter 499C.

32 Sec. 13. NEW SECTION. **499B.1A Applicability.**

33 This chapter applies to horizontal property regimes
34 established under this chapter unless otherwise provided in
35 chapter 499C.

1 other obligations, unless all such owners consent in writing
2 to the creation of a common interest community, and does not
3 include a community where all units are owned by a single
4 owner.

5 The bill does not allow for the provisions of new Code
6 chapter 499C to be varied by agreement, and rights conferred by
7 new Code chapter 499C may not be waived.

8 The bill specifies that unless otherwise provided by law new
9 Code chapter 499C applies to all common interest communities
10 established within this state having eight or more units.
11 However, the bill provides that for horizontal property regimes
12 with seven or fewer apartments, if the form of administration
13 is a board of administration, the board of administration must
14 comply with specified requirements of new Code chapter 499C
15 regarding meetings, records, and notice.

16 The bill establishes requirements and procedures for common
17 interest communities, unit owners associations, and executive
18 boards.

19 The bill provides that the membership of a unit owners
20 association shall at all times consist exclusively of all unit
21 owners except following termination of the common interest
22 community, at which time the unit owners association shall
23 consist of all former unit owners entitled to distributions
24 of proceeds or their heirs, successors, or assigns. The bill
25 requires each unit owners association to have an executive
26 board. A unit owners association must be organized as a
27 for-profit or nonprofit corporation, trust, limited liability
28 company, partnership, unincorporated association, or any
29 other form of organization authorized by the laws of this
30 state. The bill provides that the requirements of new Code
31 chapter 499C relating to a unit owners association preempt
32 any conflicting provision of the statute under which the unit
33 owners association is organized.

34 The bill specifies the duties and powers of a unit owners
35 association, including powers of the unit owners association

1 for enforcement of the provisions of declaration, bylaws, or
2 rules.

3 The bill specifies the duties and powers of an executive
4 board. An executive board, except as otherwise provided in the
5 declaration, the bylaws, or other provision of law, acts on
6 behalf of the unit owners association. The bill specifies the
7 duty of care required for members and officers of the executive
8 board.

9 The bill establishes requirements relating to meetings of
10 unit owners associations, executive boards, and committees
11 of such entities including requirements for the contents
12 of meeting notices, allowable actions during meetings,
13 requirements relating to unit owner comments, and the manner
14 in which meetings may be conducted. The bill also specifies
15 the manner and the reasons for which certain meetings may be
16 called.

17 The bill enacts requirements relating to the retention of
18 records by unit owners associations and specifies the records
19 retained by a unit owners association which may be withheld
20 from inspection and copying.

21 The bill requires a unit owners association or executive
22 board, as applicable, to deliver each notice required to be
23 given by the association under new Code chapter 499C to the
24 regular mail address or electronic mail address provided by
25 each unit owner. If a regular mail or electronic mail address
26 is not provided by the unit owner, the unit owners association
27 may deliver the notice by a different method specified in
28 the bill. The bill provides that the ineffectiveness of a
29 good-faith effort to deliver notice does not invalidate an
30 action taken at a meeting or an action taken by other means.

31 The bill provides that a declarant, unit owners association,
32 unit owner, or any other person subject to new Code chapter
33 499C may bring an action to enforce a right granted or
34 obligation imposed by the Code chapter, the declaration, or the
35 bylaws. In any such action, the court may award reasonable

1 attorney fees to the prevailing party.

2 Division II of the bill makes corresponding changes relating
3 to the enactment of new Code chapter 499C.